



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2009

Mr. Dick Gregg
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2009-10958

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 351336.

The City of South Houston (the "city"), which you represent, received two requests from the same requestor for correspondence between a city council member and a city employee regarding the printing of labels from a specified city computer. You claim that the submitted information is not subject to the Act, and, in the alternative, claim the submitted information is exempted from disclosure under section 552.109 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your statement that the two requests are "vague," do not provide "sufficient information for which the [c]ity could comply or determine if the information requested is 'already in existence[,]'" and that the requestor "has not identified with particularity what documents she seeks."¹ We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). In this case, because you have submitted responsive information for our review and submitted arguments against the disclosure of these documents, we consider the city to have made a good faith effort to

¹We note that in the future, if the city receives a request that it considers overly broad or ambiguous, then the city should ask the requestor to clarify or narrow the request. See Gov't Code § 552.222(b).

identify information that is responsive to the request. Therefore, we will consider your arguments regarding the submitted information.

Next, we address your contention that the submitted information is not public information subject to the Act. The Act is only applicable to "public information." See Gov't Code § 552.021. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. See Open Records Decision No. 462 (1987).

You assert the submitted information, which consists of correspondence between a city employee and a member of the city council, was not collected, assembled, or maintained by the city. You argue that the requestor asks for a "copy of information, not specified, that was provided by one employee of [the city] to a non employee[.]" However, we note the information at issue pertains to printing certain information on a city-owned computer. Further, we note, and you acknowledge, that the "non employee" at issue is a member of the city council, and therefore a city official. Having reviewed your arguments and the information at issue, we find that the submitted information was collected, assembled, or maintained by the city and pertains to city business. We therefore conclude that the submitted information is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. See Gov't Code §§ 552.002(a), .021.

Section 552.109 of the Government Code excepts from public disclosure "[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]" *Id.* § 552.109. This office has held the test to be applied to information under section 552.109 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code.

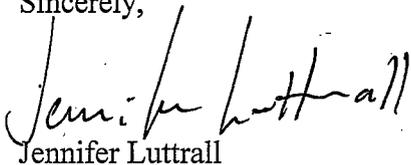
In *Industrial Foundation*, the Texas Supreme Court held that information is protected by common-law privacy if it: (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person; and (2) is not of legitimate concern to the public. *Id.* at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Having reviewed your arguments and the information at issue, we find

you have failed to demonstrate that any of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Thus, you have failed to establish that release of this information would constitute an invasion of privacy. Therefore, none of the submitted information may be withheld under section 552.109 of the Government Code. As you raise no further exceptions to disclosure, the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 351336

Enc. Submitted documents

c: Requestor
(w/o enclosures)